

DST Industries, Inc. and Local 174, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, AFL-CIO, Petitioner. Case 7-RC-19582

March 31, 1993

DECISION AND CERTIFICATION OF REPRESENTATIVE

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

The National Labor Relations Board, by a three-member panel, has considered determinative challenges in an election held on June 14, 1991, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement.¹ The revised tally of ballots shows 68 for and 67 against the Petitioner, with 4 remaining challenged ballots, a number sufficient to affect the results of the election.²

The Board has reviewed the record in light of the exceptions and briefs³ and has adopted the hearing officer's findings and recommendations, and finds that a certification of representative should be issued.

The hearing officer found that Daniel Byrd, John Fox, Donald "Joe" Mason, and Tyrone Weaver were supervisors within the meaning of Section 2(11) of the Act and thus recommended that the challenges to their ballots be sustained. The Employer excepts, contending that these individuals are nonsupervisory leaders who do not exercise independent judgment and are nothing more than "straw bosses" and conduits for relaying

management information to other employees. The Employer further contends that Weaver was a non-supervisory, probationary employee who, in addition to his production work, routinely performed quality-control duties based on his skill and experience. Finally, the Employer asserts that these individuals do not possess or exercise supervisory authority because each spends 50 percent of his time performing bargaining unit work. We find no merit to the Employer's contentions.

The Employer operates a highly sophisticated automotive, manufacturing facility where it is engaged in designing, displaying, and marketing present and future automobile prototypes and specialty automobiles, trucks, and vans for the automotive industry in general and specifically for the Ford Motor Company. The Employer also performs engineering and testing services on future car systems as requested by Ford, including supplying employees on a temporary contract basis to perform specific mechanical or engineering work at Ford's facilities.

John Fox is the working leader in the Employer's fiberglass department where there are approximately four employees. The hearing officer found, and the record shows, that Fox is responsible for the operation in which fiberglass parts are made from clay molds and supplied to the other departments of the Employer.

Donald "Joe" Mason is the working leader of the Employer's truck maintenance department. The hearing officer found, and the record shows, that he is responsible for seeing that the mechanics in his department maintain all of the Company's various vehicles in good working order and for staying within a budget.

Daniel Byrd is the location manager of the Employer's Los Angeles (LA) facility where Lincoln/Mercury prototypes are housed and cars are furnished for Lincoln/Mercury's marketing programs. The hearing officer found, and the record shows, that Byrd is the only person there responsible for carrying out the goals of this facility.

In finding these three individuals to be supervisors, the hearing officer found that they exercised independent judgment in performing their various job duties, including responsibilities for establishing job priorities, assigning work, approving requests for vacations and time off, and in the cases of Fox and Mason, effectively recommending employees for hire and lay-off. The hearing officer further found that all of them exhibited other indicia of supervisory authority, received higher pay, and enjoyed special privileges and benefits reserved by the Employer for its supervisors and managers.

Tyrone Weaver was employed by the Employer as its body shop floor manager from March 18, 1991, until his termination on June 14, 1991. The hearing officer found, and the record shows, that Weaver was re-

¹ The unit is:

All full-time and regular part-time employees, including truck drivers, non-supervisory leaders and field operations personnel, employed by the Employer at or out of facilities located at its Romulus and Clinton, Michigan facilities, but excluding office clerical employees, design department employees, confidential employees, managerial employees, guards and supervisors as defined in the Act.

² The initial tally of ballots showed 67 ballots for the Petitioner and 61 against with 26 determinative challenges. On December 5, 1991, the hearing officer issued her report and recommendation on challenged ballots in which she recommended that the challenges to 19 ballots be sustained, that the challenges to 7 ballots be overruled and that these ballots be opened and counted, and that a revised tally of ballots be issued. Subsequently, the Employer filed timely exceptions to sustaining the challenges to the ballots of Daniel Byrd, Tyrone Weaver, John Fox, and Donald "Joe" Mason. On December 27, 1991, the Employer filed a motion for an order to adopt the hearing officer's report in part and to direct the opening of the unchallenged ballots. Thereafter, on January 21, 1992, pursuant to the Board's Order and Direction, the challenged ballots of employees Poet, Maloney, Wandrack, Slezak, Gott, Helser, and Miglio were opened and counted and a revised tally of ballots issued as noted above. On January 29, 1992, the Regional Director referred the instant matter to the Board for further processing since the determinative challenged ballots of Byrd, Weaver, Fox, and Mason were still in issue.

³ The Petitioner filed a brief in support of the hearing officer's findings and in reply to the Employer's exceptions.

sponsible for the direct supervision of 24 body shop employees. This consisted, inter alia, of assigning work, inspecting the quality of the body work, granting requests for time off, and regularly filling in for Hamilton, the body shop manager, whenever he was absent. Like the other supervisory leaders discussed above, Weaver did not punch a timecard, received a higher hourly salary than the unit employees, and attended most leader meetings. In concluding that Weaver was a supervisor, the hearing officer relied on the additional fact that Weaver laid off an employee without advance approval. This layoff was subsequently ratified by the plant manager, Krohn.

Section 2(11) of the Act defines "supervisor" as an individual who has

[A]uthority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.⁴

The statutory indicia quoted above are in the disjunctive and only one need exist to confer supervisory status on an individual if that power is exercised with independent judgment on behalf of management, and not in a routine or clerical manner.⁵ Individuals with statutory supervisory authority do not lose their status simply because they infrequently exercise their authority.⁶

Having considered all the facts relating to the employment of Fox, Mason, Byrd, and Weaver in the light of the statutory definition of "supervisor," we agree with the hearing officer that these four individuals are supervisors within the meaning of the Act. In so finding, we rely on the fact that Fox, Mason, and Byrd responsibly assign and direct the work in their departments using discretion and exercising independent judgment and authority. Further, they have, without consulting their superiors, signed off on timecards and approved vacation requests. In addition, Fox and Mason have granted requests to leave work early. They also have determined when they have had too many employees in their departments and on those oc-

casions have effectively recommended and carried out the layoff of employees. As for Byrd, he is the only permanent person assigned to the LA facility. Normally two to nine other employees are detailed from the Employer's Romulus facility to work at the LA facility. The number of employees needed to be detailed at any one time is independently determined by Byrd; and he similarly determines which of the detailed employees shall be sent out to various marketing locations. We also find it significant that the responsibility for the performance of the various functions and jobs at the Los Angeles facility rests solely with Byrd.⁷

With respect to Weaver, although his employment with the Employer was of short duration, we nevertheless find that he exercised independent judgment in carrying out his body shop floor manager duties in the following ways: he effected the layoff of an employee without any prior approval; he assigned and checked employees' work and granted a request to leave work early; and he regularly filled in for Hamilton, the body shop manager and supervisor, whenever he was out of the building or on vacation. Further, the record shows that Weaver independently set job priorities of the employees in the body shop and regularly gave them direct assignments about what work to perform. Also, the record shows that during the time Weaver was with the Employer, he was observed performing bargaining unit work on only one occasion.⁸

Finally, the record does not show that Fox, Mason, Byrd, or Weaver's exercise of supervisory authority was sporadic, routine, or subject to independent review by a higher management official which would be the case if, as the Employer contends, these persons were merely "straw bosses."⁹ Rather, the record shows that these individuals operated their departments with a fair amount of independence, as indicated above, and that they did not merely relay management's instructions to the unit employees.¹⁰

Accordingly, we conclude that Fox, Mason, Byrd, and Weaver at all material times possessed and exercised supervisory authority. Consequently, the chal-

⁴ 29 U.S.C. § 152(11) (1982).

⁵ See *Monongahela Power Co. v. NLRB*, 657 F.2d 608, 613 (4th Cir. 1981) (control room foremen responsibly direct other employees and in doing so utilize "independent judgment" despite the fact that they do not exercise authority with regard to hiring, discharge, transfer, promotion, recall, discipline, or adjustment of grievances of other employees).

⁶ *Opelika Foundry*, 281 NLRB 897, 899 (1986), and cases cited therein; *NLRB v. St. Mary's Home*, 690 F.2d 1062, 1068 (4th Cir. 1982).

⁷ The Employer relies on *R. H. Peters Chevrolet*, 303 NLRB 791 (1991), to support its contention that Byrd is not a supervisor. We find that *Peters* is distinguishable. There the issue before the Board was whether the service advisors shared a sufficient community of interest with the body shop employees to be included in the unit. Moreover, the Board did not address the supervisory issue because no exceptions had been taken to the hearing officer's disposition of that issue. Therefore, we find that neither the facts nor the issues raised in *Peters* are dispositive of the issue in this case.

⁸ The hearing officer relied on the fact that the Employer held Weaver out as a supervisor by introducing him "as their new guy that they answer to" and that Weaver was "the new floor manager." We find it unnecessary to rely on this evidence in adopting her recommendations. See *S & S Screw Machine Co.*, 288 NLRB 235, 243 (1988).

⁹ *Bowne of Houston*, 280 NLRB 1222, 1225 (1986).

¹⁰ *California Beverage Co.*, 283 NLRB 328, 330 (1987).

lenges to their ballots are sustained, and the tally of ballots is further revised to reflect that 68 votes were cast for, and 67 were cast against, the Petitioner, with no remaining determinative challenges. Therefore, we issue the following

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for Local 174, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, AFL-CIO, of the employees in the following appropriate unit:

All full-time and regular part-time employees, including truck drivers, non-supervisory leaders and field operations personnel, employed by the Employer at or out of its facilities located at 34364 Goddard Road, Romulus, Michigan and 11900 Tecumseh Road, Clinton, Michigan; but excluding office clerical employees, design department employees, confidential employees, managerial employees, guards and supervisors as defined in the Act.